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EXAMINER

COONEY, JOHN M

ART UNIT	PAPER NUMBER
1711	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Applicant's arguments filed 3-26-07 have been fully considered but they are not persuasive.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-37, 41-56, 60-62, and 76-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Croft (5,688,860) in view of GRANT et al.(Chemical Dictionary).

Croft discloses polymer materials comprising the reaction product of isocyanates, isocyanate reactive materials, catalysts, plasticizers, extenders/crosslinkers, and other materials of applicants' claims (see column 10 line 60 – column 12 line 40, as well as, the entire document). Croft's disclosure sets forth materials and reactants as well as intermediates employed in the making of its products such that it is seen that esterification to the degree defined by the claims is met by Croft's disclosure, and this recitation in the claims does not distinguish the claims over the teachings of Croft.

Croft differs from applicants' claims in that its oils and derivatives are not blown. However, GRANT et al. (see page 89) discloses blowing oils to be a well known treatment of oils for purposes of providing well studied oxidization effects to the oils which are blown. Based on the disclosure of GRANT et al. and applicants' own

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admissions, it is held that it would have been obvious for one having ordinary skill in the art to have blown the vegetable oils of Croft in the manner disclosed by GRANT et al. for the purpose of obtaining oxidized oils and effecting control of the reactivities of the oils involved in order to arrive at the products of applicants' claims with the expectation of success in the absence of a showing of new or unexpected results.

When reviewing results, the following must be considered:

Result Must Compare to Closest Prior Art:

Where a definite comparative standard may be used, the comparison must relate to the prior art embodiment relied upon and not other prior art – *Blanchard v. Ooms*, 68 USPQ 314 – and must be with a disclosure identical (not similar) with that of said embodiment: *In re Tatincloux*, 108 USPQ 125.

Results Must be Unexpected:

Unexpected properties must be more significant than expected properties to rebut a prima facie case of obviousness. *In re Nolan* 193 USPQ 641 CCPA 1977.

Obviousness does not require absolute predictability. *In re Miegel* 159 USPQ 716.

Since unexpected results are by definition unpredictable, evidence presented in comparative showings must be clear and convincing. *In re Lohr* 137 USPQ 548.

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In determining patentability, the weight of the actual evidence of unobviousness presented must be balanced against the weight of obviousness of record. *In re Chupp*, 2 USPQ 2d 1437; *In re Murch* 175 USPQ 89; *In re Beattie*, 24 USPQ 2d 1040.

Claims Must be Commensurate With Showings:

Evidence of superiority must pertain to the full extent of the subject matter being claimed. *In re Ackerman*, 170 USPQ 340; *In re Chupp*, 2 USPQ 2d 1437; *In re Murch* 175 USPQ 89; *Ex Parte A*, 17 USPQ 2d 1719; accordingly, it has been held that to overcome a reasonable case of prima facie obviousness a given claim must be commensurate in scope with any showing of unexpected results. *In re Greenfield*, 197 USPQ 227. Further, a limited showing of criticality is insufficient to support a broadly claimed range. *In re Lemin*, 161 USPQ 288. See also *In re Kulling*, 14 USPQ 2d 1056.

Applicants' have not persuasively demonstrated unexpected results for the combinations of their claims. Evidence must be attributed to the employment of blown oils rather than non-blown oils. Comparisons must be made with the prior art embodiment relied upon. Applicants must demonstrate their results to be clearly and convincingly unexpected and more than mere optimizations of the knowledge in the art or more significant than being secondary in nature. Blowing/oxidation of vegetable oils has the expected effect of brings about changes in -OH functionality, and, accordingly, effects on reactivities of the resultant materials, and there are numerous expected effects associated with these changes. These effects include changes in crosslinking density and altered reactivities. Accordingly, burden is upon applicants' to demonstrate

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that any showing of results is, in fact, new or unexpected. Additionally, applicants' showings must be commensurate in scope with the scope of the claims as they currently stand.

Examiner has corrected the inadvertent error in statement of the grounds of rejection and it now corresponds with the statements of the body of the rejection. Additionally, clarification of the grounds of rejection has been set forth in the body of the rejection above.

Applicants' arguments have been considered. However, rejection is maintained for the reasons set forth above. Although oils of Croft may be employed as plasticizers, such does not negate any implicit reactivity these materials may have. Nor does such negate the expected impact of reactivities that blowing would have on these oils. Showing reduced hydroxyl functionality in castor oil as opposed to the oils of applicants' claims does not substitute for a clear and convincing showing of new or unexpected results attributable to the employment of the modified oils of applicants' claims that is commensurate in scope with the scope of the claims.

As to applicants' arguments pertaining to Croft's disclosure of the functional materials of the claims, it is maintained that Croft provides encompassing disclosure of the functional materials of applicants' claims and provides for esterified polyols being formed to the degree required by the claims (see again column 7 lines 47- column 11 lines 65, as well as, the entire document). As the claims do not require degrees of content of individual components in the resultant esterified polyols or provide for other

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distinguishing reactive mechanisms not provided for by Croft's full teaching, distinction over the preparations as provided for by Croft is not seen. Further, it is noted that at least claims 36, 55, 76, and 82 do not even require that the variously defined multifunctional alcohols and multifunctional compounds be different from one another and/or chosen from specifically defined compounds or groups of compounds.

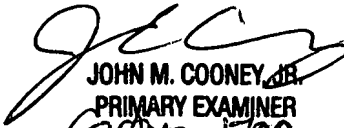
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Cooney whose telephone number is 571-272-1070. The examiner can normally be reached on M-F from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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